

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

DANIEL CHRISTOPHER SANFORD, SR. §
VS. § CIVIL ACTION NO. 6:13cv619
DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

Petitioner Daniel Christopher Sanford, Sr., an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation (docket entry #5) concluding that the petition should be dismissed for lack of subject matter jurisdiction as successive. The Petitioner has filed objections.

The Petitioner is challenging his 1982 Gregg County conviction for the offense of aggravated robbery. He argued that his trial attorney was ineffective. The petition was filed on August 29, 2013. He previously filed a petition for a writ of habeas corpus challenging the revocation of his parole associated with the conviction, which was denied. *Sanford v. Director, TDCJ-CID*, No. 6:09cv190 (E.D. Tex. April 27, 2011), *aff'd*, No. 11-40551 (5th Cir. July 19, 2012). Since the facts necessary to raise the present petition occurred before the filing of the initial petition, the present petition is a second or successive petition. The Petitioner has not shown that the Fifth Circuit has given him permission to file a second or successive petition, thus the present petition should be dismissed for lack of subject matter jurisdiction. *Crone v. Cockrell*, 324 F.3d 833, 836 (5th Cir. 2003). The Petitioner's argument that he did not learn of the facts supporting the present petition until after his previous

petition was dismissed is not dispositive. Such facts may lead the Fifth Circuit to grant him permission to file a second or successive petition, but this Court may not consider the petition in the absence of permission from the Fifth Circuit.

The Report and Recommendation of the Magistrate Judge, which contain his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Thus the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DISMISSED** without prejudice for lack of subject matter jurisdiction. It is further

ORDERED that a certificate of appealability is **DENIED**. It is further

ORDERED that all motions not previously ruled on are **DENIED**. It is finally

ORDERED that the Clerk of Court shall return unfiled any new petitions for a writ of habeas corpus submitted by the Petitioner regarding his conviction unless he shows that he has received permission from the Fifth Circuit to file it.

So ORDERED and SIGNED this 5th day of November, 2013.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE